IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Levy

Application No: 10/797,920

Filed: March 9, 2004

For: METHOD AND APPARATUS FOR
CONTENT IDENTIFICATION/CONTROL

Examiner: Stanley, Mark P.

Date: August 21, 2009

Art Unit: 2623

Confirmation No.: 3347

VIA ELECTRONIC FILING

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

　　Appellant requests review of the final rejection of claims 1, 4, 7-11, 13-18 and 25-31 in the above-identified application. No amendment is being filed with this request.

　　This request is being filed with a Notice of Appeal.

　　The review is requested for the reason(s) stated on the attached sheets. (No more than 5 pages are provided.)

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Respectfully submitted,
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

<u>**REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW**</u>

The Board will reverse the rejections. A few reasons for reversal are discussed below. (The Final Rejection spans 18 pages, so only a few of the reasons for reversal can be discussed within the five page limit of this paper.)

The Office contends that Roese (20030217122) anticipates claim 4. Not so.

Claim 4 is drawn to a method of providing entertainment content from a distributor to a home. For example, a pay per view sports network may stream a soccer match to a consumer.

The content data is transmitted in packets that identify the intended destination – within a home (i.e., the first destination address). The distributor intends the content to be received by the first destination address.

The claimed arrangement concerns potential re-distribution of the content, e.g., the consumer having a device that forwards received packets from the intended recipient address (within the home) to another address (e.g., a friend's house).

To address such potential re-distribution, the claimed method specifies that the distributor forms the header data so as to include "additional data" specifying whether it is permissible to send a copy of data in the packet to a second destination address.

This "additional data" has one of two states. State 1 indicates it is not permissible to send a copy of the content data anywhere else (i.e., it is forbidden to send the content data to any second destination address).

State 2 is more permissive. State 2 indicates it is not permissible to send a copy of the content data anywhere else _except_ _to an address within a domain that also includes the first_ _destination address_ (i.e., in the home). Such limited redistribution is permitted.

Turning to the art, the Board will see that Roese does not anticipate the method of claim 4.

As shown in Roese's Fig. 6, and paragraphs [0115] – [0117], his arrangement inserts a tag in certain packets. This tag indicates that the packets should not be accessed if found outside a specified location (e.g., a present device, a particular campus, etc.). His tag thus has only a single state. His tag only indicates a single type of restriction:

> [0116] If system 100 determines (step 610) that the data is location sensitive, system 100 tags (step 620) the data. For example, the application generating the data and/or the server generating a data packet to transport the data over the network can add this tag while generating the data and/or packet. In one example, the tag comprises a file header that identifies location restrictions.

In *Response to Arguments* included with the Final Rejection, the Office contends:

> Applicant does not clearly define the role of the distributor in the claim limitations, mainly Applicant does not differentiate whether the distributor may or may not be the same entity as that of the first destination address and whether the user may be the distributor and the user provision the entertainment content to a first destination address such as a home personal computer via actual use of the home personal computer...

The meaning of this quoted text is unclear. However, the claim is clear. As the claim states, the method is drawn to "*providing entertainment content from a distributor to a home, while governing potential redistribution of the content from the home....*"

An interpretation of the claim that somehow makes the user in the home the claimed distributor is too tortured for the Board to sustain.

(Would a home user form packet header data with the "additional data" having the two specified states, as required by the "distributor" in the claim?)

In the present arrangement, re-distribution is conditioned on a relation between two addresses: the re-distribution address and the initial address (assuming the flag is in the second

state). That is, if the re-distribution address is in the same (home) domain as the first address, redistribution is permitted. Else, not. Roese lacks these concepts

Instead, Roese makes all delivery decisions (initial distribution and re-distribution) based on location. Roese does not test any relation between an original address and a subsequent address in deciding whether re-distribution is permitted.

In some cases, Roese's *result* may be the same as Appellant's *result* (re-distribution might be denied), but the *method* of reaching the result is different. The issue before the Board is the *method* – not the result. (A claim may concern a method of losing weight – by liposuction. Prior art may teach a different method of losing weight – by exercise and restricting caloric intake. The latter doesn't anticipate the former, even though the result may be the same.)

The Final Rejection is grounded, improperly, on similarity of *result*.

Roese does not teach:

the distributor forming header data to additionally include additional data specifying whether it is permissible to send a copy of the content data in the packet to a second destination address different than the first destination address, wherein the additional data has at least two states, respectively indicating:

(a) it is not permissible to send a copy of the content data in the packet to <u>any</u> second destination address; <u>or</u>

(b) it is not possible to send a copy of the content data in the packet to any second destination address <u>except to a second destination address within a domain that also includes the first destination address</u>.

Finally (for the present purposes), claim 4 requires that the domain comprises networked devices "associated with a single family." Roese has no such teaching.

The Board will reverse the anticipation rejection of claim 4.

The rejections of claims 7-10 and 30, which depend from claim 4, suffer similar shortcomings.

Independent claim 11 is likewise said to be anticipated by Roese. Again, not so.

The Final Rejection of claim 11 (middle of page 7) makes reference to "*a firewall as described in the response to arguments above.*" However, there is no reference to a firewall in arguments above.

The Final Rejection cites paragraph [0117] of Roese, which explains that if data is going to be routed – in a next hop – to a location that is outside the permitted location(s), the system prohibits the device from being transmitted to that out-of-bounds location. Thus, Roese's data is location-limited.

However, this again goes to *result*. Claim 11 claims more than this. Claim 11 requires "additional data" that, in a first state, prohibits re-transmission of a copy of content data in a packet to <u>any</u> second destination address, and in a second state, prohibits re-transmission of a copy of data in the packet to any second destination address <u>other than a second destination address within a domain that also includes a first destination address – the first address being where delivery of the packet was intended by an originator thereof</u>.

Roese's data is location limited, so there can be some similarity in *result*. However, he does not teach each aspect in the particular *method* just-reviewed from claim 11. Again, the Board will recognize such deficiency and reverse.

The rejections of claims 13-18 and 31, which depend from claim 11, suffer similar shortcomings.

Most of the other claims stand rejected in view of Roese and the present inventors' earlier work, e.g., as detailed in 20010044899 and 20020186844. Such rejections again will not stand scrutiny by the Board.

For example, independent claim 25 concerns deterring unauthorized redistribution of video entertainment from a consumer's home network, which includes a computing device and a networking device. The claim requires that *the consumer's home computing device* divide the video entertainment among payload portions of plural IP packets, and that *the consumer's home computing device* include certain restriction information in headers of such packets.

However, the Final Rejection is wholly silent on the performance of these acts by *the consumer's home computing device*. Moreover, neither of the cited references teaches such a limitation. And the rationale offered in support of the rejection fails to indicate why such an arrangement would be practiced *by the consumer's home computing device.*

The Board will agree that the Action has failed to establish *prima facie* obviousness of the method of claim 25.